

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

EUGENE SCALIA,  
SECRETARY OF LABOR,  
UNITED STATES DEPARTMENT OF  
LABOR,

Plaintiff,

V.

[illegible]

Civil Action No.

CREATIVE HOME CARE, LLC,  
NABINDRA ACHARYA and  
UDAYA ACHARYA

Defendants.

## COMPLAINT

Plaintiff, Eugene Scalia, Secretary of Labor, United States Department of Labor (“Plaintiff”) brings this action to enjoin CREATIVE HOME CARE, LLC, a limited liability company, NABRINDA ACHARYA, an individual, and UDAYA ACHARYA, an individual, (collectively, “Defendants”), from violating the provisions of Sections 6, 7, 11(c), 15(a)(2), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* (“the Act”), and for a judgment against Defendants in the total amount of back wage compensation found

by the Court to be due to any of the employees of Defendants pursuant to the Act and an equal amount due to the employees of Defendants in liquidated damages.

1. Jurisdiction of this action is conferred upon the Court by Section 17 of the Act, 29 U.S.C. § 217, and by 28 U.S.C. §§ 1331 and 1345.

2. Defendant CREATIVE HOME CARE, LLC, is a limited liability company organized under the laws of the Commonwealth of Pennsylvania, with a place of business at 4316 Derry St, Harrisburg, PA 17111. Defendant is engaged in the operation of a healthcare staffing agency located at 4316 Derry St, Harrisburg, PA 17111, within the jurisdiction of this court.

3. Defendant NABINDRA ACHARYA (“NABINDRA”) is the owner and chief executive officer of CREATIVE HOME CARE, LLC. During the relevant period, NABINDRA was responsible for hiring, disciplining, promoting and firing employees, and controlling the work to be done by employees. NABINDRA oversees the operations of the company.

4. Defendant UDAYA ACHARYA (“UDAYA”) is the human resources manager of CREATIVE HOME CARE, LLC. During the relevant period, UDAYA was responsible for hiring, disciplining, promoting and firing employees, setting the employees’ schedules, and controlling the work to be done by employees. UDAYA oversees the operations of the company.

5. The business activities of Defendants, as described herein, are and were related and performed through unified operation or common control for a common business purpose of providing domestic services and constitute an enterprise within the meaning of Section 3(r) of the Act.

6. Defendants employ persons in domestic service, which affects commerce per Section 2(a)(5) of the Act. Defendants' employees, among other things, provide in-home healthcare services to CREATIVE HOME CARE, LLC's patient-clients.

7. Defendants willfully violated the provisions of Sections 6 and 15(a)(2) of the Act by employing domestic service workers and caregivers in an enterprise engaged in commerce or in the production of goods for commerce and compensating these employees at rates less than the applicable statutory minimum rate prescribed in Section 6 of the Act. Therefore, Defendants are liable for unpaid minimum wages and an equal amount of liquidated damages under Section 16(c) of the Act.

8. For example, during the time period from at least July 1, 2017 through at least October 1, 2019, Defendants failed to pay numerous employees at CREATIVE HOME CARE, LLC the applicable minimum wage for all hours worked. In many workweeks, employees were not paid for all hours worked and as a result their hourly rate for the workweek fell below \$7.25 per hour.

9. Defendants willfully violated the provisions of Sections 7 and 15(a)(2) of the Act by employing their employees in an enterprise engaged in commerce or in the production of goods for commerce for workweeks longer than those prescribed in Section 7 of the Act without compensating said employees for employment in excess of the prescribed hours at rates not less than one and one-half times their regular rates. Therefore, Defendants are liable for the payment of unpaid overtime compensation and an equal amount of liquidated damages under Section 16(c) of the Act.

10. For example, during the time period from at least July 1, 2017 through at least October 1, 2019, Defendants failed to compensate numerous employees who worked over 40 hours in a workweek one and one-half times their regular rate for those overtime hours. Certain employees at CREATIVE HOME CARE, LLC worked in excess of 40 hours in many workweeks but did not receive time and one-half their regular rate for their overtime hours due to payment of straight time for hours worked over 40 in a workweek. In some weeks, Defendants paid the standard rate for all hours worked even where the employee worked more than 40 hours in a work week. During other weeks, employees were paid overtime for hours worked over 80 in a two-week period and were not always paid overtime for hours worked over 40 in a workweek. Defendants also failed to pay for all hours employees actually worked as recorded in payroll records, which resulted in

employees not receiving one and one-half times their regular rate for those overtime hours. Defendants also failed to include a biweekly bonus in the regular rate when computing the overtime premium rate, which resulted in employees not receiving one and one-half times their regular rate for those overtime hours. When calculating overtime premium pay for those employees who worked at both Defendants' office and at clients' homes, Defendants failed to combine all hours worked at both locations, which resulted in employees not receiving one and one-half times their regular rate for those overtime hours.

11. Defendants violated the provisions of Sections 11(c) and 15(a)(5) of the Act in that Defendants failed to make, keep, and preserve adequate and accurate records of their employees, which they maintained as prescribed by the regulations issued and found at 29 C.F.R. Part 516. Specifically, Defendants failed to make, keep, and preserve records containing employees' hours worked each workday and total hours worked each workweek; total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; and total premium pay for overtime hours. 29 C.F.R. §§ 516.2(a)(7), (8), (9).

WHEREFORE, cause having been shown, the Secretary prays for judgment against Defendants providing the following relief:

(1) For an injunction issued pursuant to Section 17 of the Act permanently enjoining and restraining Defendants, their officers, agents, servants, employees, and those persons in active concert or participation with Defendants who receive actual notice of any such judgment, from violating the provisions of Sections 6, 7, 11(c), 15(a)(2) and 15(a)(5) of the Act; and

(2) For judgment pursuant to Section 16(c) of the Act finding Defendants liable for unpaid minimum wage and overtime compensation due to certain of Defendants' current and former employees listed in the attached Schedule A for the period of July 1, 2017 through October 1, 2019, and for an equal amount due to certain of Defendants' current and former employees in liquidated damages. Additional amounts of back wages and liquidated damages may also be owed to certain current and former employees of Defendants listed in the attached Schedule A for violations continuing after October 1, 2019, and may be owed to certain current and former employees presently unknown to the Secretary for the period covered by this Complaint, who may be identified during this litigation and added to Schedule A; or

(3) In the event liquidated damages are not awarded, for an injunction issued pursuant to Section 17 of the Act restraining defendants, their officers, agents, employees, and those persons in active concert or participation with defendants, from withholding the amount of unpaid minimum wages and overtime

compensation found due defendants' employees and prejudgment interest computed at the underpayment rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621.

FURTHER, Plaintiff prays that this Honorable Court award costs in his favor, and an order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

Kate S. O'Scannlain  
Solicitor of Labor

Oscar L. Hampton III  
Regional Solicitor

/s/ ETHAN DENNIS

---

By: Ethan M. Dennis  
PA ID# 308871  
Office of the Solicitor, Region III  
Suite 630 East, The Curtis Center  
170 South Independence Mall West  
Philadelphia, PA 19106-3306  
(215) 861-5142 (Phone)  
(215) 861-5162 (Fax)  
Dennis.Ethan.M@dol.gov

U.S. DEPARTMENT OF LABOR

Attorneys for Plaintiff

**Schedule A**

Acharya, Bhawani S

Acharya, Bishnu M

Acharya, Chandra

Acharya, Goma D

Acharya, Lok M

Acharya, Menuka D

Acharya, Naina K

Acharya, Pabitra

Acharya, Padma

Acharya, Prajapati

Acharya, Prem

Acharya, Sabitra

Acharya, Shova K

Acharya, Tika D

Acharya, Tula R

Acharya, Udaya C

Acharya, Yadu P

Adhikari, Ananta P

Adhikari, Arjun

Adhikari, Deoraj

Adhikari, Durga M

Adhikari, Hari

Adhikari, Khina M

Adhikari, Khina R

Adhikari, Krishna L

Adhikari, Kumari

Adhikari, Mahendra

Adhikari, Meena M



Adhikari, Menuka  
Adhikari, Phanendra  
Adhikari, Punnya P  
Adhikari, Tara  
Adhikari, Toya N  
Adhikari, Yam P  
Adhikary, Aasha  
Ahmed, Kadija K  
Aley, Kirti M  
Ali, Mohamedsadiq A  
Bajgai, Oma N  
Baral, Gauri  
Baral, Januka  
Baral, Rupmina  
Bhandari, Deepa  
Bhandari, Lachhi  
Bhandari, Netra P  
Bhandari, Yojana  
Bhattarai, Ambar B  
Bhattarai, Chabi  
Bhattarai, Dhanapati  
Bhattarai, Om B  
Bhattarai, Udaya  
Bhujel, Bishnu M  
Bhujel, Buddhi M  
Bhujel, Thagi M  
Budhathoki, Binita  
Chamlagai, Khagendra  
Chamlagai, Santi

Chapagai, Biras  
Chapagai, Krishna M  
Chauhan, Indushree  
Chhetri, Dhan K  
Chimariya, Nari M  
Chimoriya, Lachu M  
Dahal, Damanta  
Dahal, Januka  
Dahal, Khagendra  
Dahal, Punam  
Dahal, Radhika  
Dahal, Tila C  
Dangal, Hema D  
Dhakal, Deena N  
Dhakal, Geeta K  
Dhakal, Sabina  
Dhakal, Taranidhi  
Dhamala, Indrawati  
Dhamala, Laxu  
Dhamala, Puspa  
Dhamala, Rohini M  
Dhimal, Ganga  
Dhimal, Khagen  
Dhimal, Lachi M  
Dhimal, Mitra L  
Dhimal, Parsuram  
Dhimal, Uttam K  
Dhungana, Karga M  
Dhungana, Kharga

Dhungana, Khina  
Dhungana, Prakash  
Dhungana, Tika D  
Dhungana, Tika R  
Dhungana, Yashoda  
Dhungel, Debaki  
Dhungel, Lila  
Dulal, Durga M  
Dulal, Ganga  
Dulal, Janka  
Dulal, Keshab  
Dulal, Khamraj  
Dung, Pham H  
Gautam, Rup  
Ghaley, Khadka  
Ghalley, Dhani M  
Ghimire, Ashma  
Ghimire, Damodar  
Ghimire, Prem L  
Gotay Pagan, Glorybell  
Gurung, Bimala  
Gurung, Buddhi M  
Gurung, Devi M  
Gurung, Jamuna  
Gurung, Kamal  
Gurung, Khadka  
Gurung, Krishna  
Gurung, Nar B  
Gurung, Padmawati

Gurung, Radhika  
Gurung, Ratna B  
Gurung, San M  
Gurung, Tika M  
Kafle, Shantiram  
Kafle, Teela R  
Kafley, Sita  
Karki, Ananti M  
Karki, Bhagi R  
Karki, Bhanu B  
Karki, Dambar  
Karki, Hasta  
Karki, Rupa  
Katel, Jyoti  
Katel, Rohit  
Katel, Yuwana  
Kharel, Ganesh P  
Kharel, Puspa L  
Kharel, Ram  
Kharel, Sashi D  
Khatiwada, Dhana M  
Khatiwada, Ganapati  
Khatiwada, Hima  
Khatiwada, Padam  
Khatiwoda, Chida  
Koirala, Bhuwani S  
Koirala, Khada  
Koirala, Pabi M  
Koirala, Rupa

Kuikel, Khem  
Magar, Chandra M  
Magar, Indra B  
Mahat, Bhawani S  
Mahmood, Hina  
Mainali, Sachchi  
Mainali, Sajja  
Mangar, Nandu  
Manger, Kala  
Manger, Kalpana  
Mishra, Nanda L  
Mishra, Netra P  
Misra, Om P  
Misra, Purusottam  
Mohamed, Mohamed  
Mongar, Dil  
Mongar, Pabi  
Mongar, Som  
Monger, Bindu  
Monger, Budda B  
Monger, Nir M  
Morales-Santiago, Iris  
Muktan, Suk M  
Neopane, Radhika  
Neupane, Abhi  
Neupane, Kamala D  
Niroula, Durga P  
Niroula, Jaga N  
Niroula, Kul S

Ortiz, Witdlliann  
Parajuli, Lachi  
Parajuli, Madhu Maya  
Parbati, Gajurel  
Pham, Huy Dung  
Pokhrel, Kalpana  
Pokhrel, Khagindra  
Pokhrel, Tulasa D  
Poudyel, Kamal  
Poudyel, Pabitra  
Rai, Babita  
Rai, Binita  
Rai, Himali M  
Rai, Naresh  
Rai, Padma L  
Rai, Phul M  
Rai, Purni M  
Rai, Suk M  
Regmi, Laxmi  
Rimal, Hem L  
Sanyasi, Gangi M  
Sarma, Hemanta  
Saru, Dave  
Shaheen, Aneela  
Siwakoti, Arju  
Siwakoti, Damanta  
Siwakoti, Geeta  
Siwakoti, Kharananda  
Siwakoti, Kumar

Siwakoti, Laxmi

Souda, Rana

Subedi, Bhakti

Subedi, Krishna

Subedi, Sill

Subedi, Tanka N

Tamang, Nilu

Tamang, Santa

Tamang, Suk B

Thapa, Suraj

Timsina, Dilli R

Timsina, Ganga

Timsina, Hari L

Timsina, Radhika

Timsina, Tara D

Tiwari, Binita

Tiwari, Dina

Tiwari, Lal B

Upreti, Chhabi

Uprety, Hem L

Uprety, Kamala

Yussuf, Jaelo A